

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

COLE'S WEXFORD HOTEL, INC.,
on its own behalf and on behalf of all others
similarly situated,

Plaintiffs,

v.

UPMC and HIGHMARK INC.,

Defendants.

Case No. 2:10-cv-01609-JFC

Judge Joy Flowers Conti

**DEFENDANT HIGHMARK INC.'S MOTION TO STAY
CONSIDERATION OF PLAINTIFF'S MOTION FOR PRELIMINARY
CERTIFICATION OF THE SETTLEMENT CLASS AND PLAINTIFF AND UPMC'S
JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

Highmark Inc. ("Highmark"), by and through its undersigned counsel, respectfully moves to stay this Court's consideration of Plaintiff's Motion for Preliminary Certification of the Settlement Class (Doc. No. 343) and Plaintiff and UPMC's Joint Motion for Preliminary Approval of Settlement (Doc. No. 345), and in support thereof states as follows:

1. Plaintiff filed its Third Amended Complaint against Highmark and UPMC on October 1, 2014 (Doc. No. 286). This Complaint contained allegations against both UPMC and Highmark that were brought on behalf of the same putative class. On February 2, 2016, plaintiff and UPMC notified this Court that they had settled all claims against UPMC. *See Report of Mediation* (Doc. No. 327). Plaintiff has not settled its claims against Highmark, and Highmark intends to contest these allegations vigorously, both with respect to their suitability for class action treatment and on the merits.

2. On February 15, 2016, plaintiff and UPMC filed their Joint Proposed Schedule for Settlement Approval (Doc. No. 333). This proposed schedule requested that the Court hold its preliminary approval hearing between March 8th and March 17th, and permit notice of the settlement to issue to the putative settlement class within fourteen days after preliminary approval, with an approximate target of March 31st.

3. Highmark requested the opportunity to be heard on the timing of this Court's consideration of certification for the settlement and litigation classes. See Status Report and Position Statements Regarding Disputed Procedures (Doc. No. 334), at 5-9. At the February 16th Status Conference, this Court granted Highmark's request to submit a motion to stay any decision regarding certification of the settlement class.

4. As described more fully in Highmark's Memorandum in Support, granting the requested stay is necessary to avoid prejudice to Highmark. Under *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), this Court must apply the same standard in addressing a settlement class as it does in addressing a litigation class. Because the putative settlement class is identical to the putative litigation class, this Court should not decide the propriety of certification without first hearing Highmark's evidence and arguments against certification.

5. Further, granting the requested stay preserves judicial economy by providing the Court with the benefit of a full adversarial presentation before it makes a decision, and by eliminating the possibility that the Court will have to revisit any decision to certify a settlement class.

6. The requested stay need not be lengthy, nor will it cause any prejudice to UPMC or plaintiff. This Court has directed an expedited schedule for class certification proceedings for the litigation class, and any delay will be minimal.

WHEREFORE, and for the reasons more fully explained in Highmark's Memorandum in Support, Highmark respectfully requests that this Court stay its consideration of the certification of the settlement class and preliminary approval of the settlement pending its decision on certification of the litigation class. A proposed order is attached.

Dated: March 8, 2016

/s/ Margaret M. Zwisler

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Motion to Stay Consideration Of Plaintiff's Motion for Preliminary Certification of the Settlement Class and Plaintiff and UPMC's Joint Motion For Preliminary Approval of Settlement was served upon counsel of record for each of the parties via this Court's CM/ECF system on March 8, 2016.

/s/ Margaret M. Zwisler
Margaret M. Zwisler